

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

TALMUS R. TAYLOR,

Defendant

CRIMINAL NO. 05-10067-PBS

**GOVERNMENT’S MOTION TO STAY SENTENCE AND
TO RELEASE DEFENDANT FROM HALFWAY HOUSE PENDING APPEAL**

On May 31, 2006, the Court sentenced the defendant to probation for a period of five years, with the condition that he serve the first year in a halfway house. Judgment entered on July 20, 2006. The government filed a notice of appeal on August 7, 2006. The defendant commenced serving his period of halfway house confinement on October 17, 2006. The government requests that the Court stay the defendant's service of his sentence – and order that the defendant be released from the halfway house – pending the outcome of the government's appeal.

In the event the government prevails on appeal and the case is remanded for re-sentencing, the Court will face the question of how much credit the defendant should receive for time served on probation and in a halfway house. See United States v. Martin, 363 F.3d 25, 38 (1st Cir. 2004) (on remand, defendant must receive credit for time served on probation against sentence of imprisonment imposed at re-sentencing). In Martin, however, the First Circuit explained that a defendant is not entitled to a one-to-one offset of time served on probation or in home detention against time to be served in prison. Id. at 39. Thus, in the event the government prevails on appeal, the defendant faces the prospect of incarceration after having been released

from a halfway house. As the First Circuit noted in Martin, such a result would be “unfortunate,” id. at 41, and contrary to the interest in the orderly administration of justice.

Accordingly, the government moves that the Court stay the defendant’s service of his sentence, order the defendant's release from the halfway house, and place the defendant back on his conditions of pretrial release pending the conclusion of the government's appeal.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ John A. Capin

JOHN A. CAPIN
Assistant U.S. Attorney